KANSAS VENEREAL-DISEASE LEGISLATION UPHELD.

The Supreme Court of Kansas in a recent decision has declared that the 1917 law for the control of communicable diseases is constitutional and has also upheld the validity of regulations of the State board of health and an ordinance of the city of Topeka regarding venereal disease control.[1]

The defendants were found to be venereally infected and were ordered quarantined by the city health officer of Topeka, acting under authority of the regulations of the State board of health and a city ordinance. Application was made for a writ of habeas corpus, the defendants attacking the constitutionality of the 1917 law and the validity of the State board of health regulations and the city ordinance.

The statute enacted in 1917 gives the State board of health authority to declare what diseases are communicable and to make regulations for their control. Under this act the State board of health declared venereal diseases to be communicable and published regulations for their control. The city of Topeka also passed an ordinance relating to the control of venereal diseases. Under the regulations and ordinance, venerally infected persons could be quarantined.

The Supreme Court denied the writ. In declaring the law constitutional and the regulations and ordinance valid, the court said:

> The statute is assailed as delegating legislative power to the State board of health. The statute belongs to the well-known class in which the legislature enacts a law in general terms, confers on an officer or administrative body power to enforce the law, and, to accomplish that end, to adopt necessary rules and regulations, and prescribes penalties for violations of the regulations so adopted. (12 C. J., 844, 848.) The necessity for legislation of this character is demonstrated by very recent events. If, when the statute under consideration was before the legislature, it had designated all the infectious, contagious, and communicable diseases it knew, and had prescribed regulations for their suppression and control, it would have omitted the deadly influenza, which soon afterwards made such appalling inroads on the lives and health of the people of the State. To meet emergencies of this character it is indispensable to preservation of the public health that some administrative officer or board should be clothed with authority to make adequate rules which have the force of law, and generally the public welfare is best promoted by delegating power to make administrative regulations to fulfill the expressed intention of the legislature. While in this instance the terms of the statute are somewhat meager, it undertakes to protect public health by preventing dissemination of dangerous communicable diseases through isolation and quarantine measures, nonobservance of which is declared to be a misdemeanor; and the authority given the State board of health to specify such diseases as measure up to the standard of infectious, contagious, and communicable and to prescribe appropriate control measures is well sustained. * * *

[1] Ex parte McGee et al., 185 Pac. 14.

The rules of the State board of health and the city ordinance are assailed as unreasonable. In this instance only those provisions of the rules of the State board of health and of the city ordinance are involved which relate to isolation of persons who have been examined and have been found to be diseased. Reasonableness of provisions relating to discovery and to examination of suspects need not be determined. It may be observed, however, that while provisions of the latter class cut deeply into private personal right, the subject is one respecting which a mincing policy is not to be tolerated. It affects the public health so intimately and so insidiously that considerations of delicacy and privacy may not be permitted to thwart measures necessary to avert the public peril. Only those invasions of personal privacy are unlawful which are unreasonable, and reasonableness is always relative to gravity of the occasion. Opportunity for abuse of power is no greater than in other fields of governmental activity, and misconduct in the execution of official authority is not to be presumed.

It is urged that the regulations in question are unreasonable, in that they authorize isolation in remote places beyond the limits of the city in which the petitioners reside. The court knows of no law or rule of public policy or private right which requires a person who, for the protection of the public, must be isolated and treated for loathsome communicable disease to be interned in the locality in which he may reside. It would have been competent for the State board of health to designate a single hospital for the detention of all persons in the State found to be so diseased, and it is entirely reasonable for cities having inadequate facilities or having no facilties of their own to take advantage of those provided by State authority. * * *

In the application for the writ it is stated that if the petitioners be diseased they are able to provide themselves with proper treatment in an isolated place in the city of Topeka. The answer is: The public health authorities are not obliged to take chances. * * *